LIM THIAN HEN & ORS. v. REGINA; TAN BENG SENG v. REGINA; CHUA AH SENG v. REGINA.

[C. Cr. A. (Murray-Aynsley, C.J., Brown and Buttrose, JJ.) May 14, 1953]

[Singapore — Criminal Appeals Nos. 1, 2 and 4 of 1953]

Penal Code, s. 397 — Armed robbery — Sentence of whipping.

The appellants who had been convicted of armed robbery had been sentenced to whipping in addition to their sentences of imprisonment.

Held: (1) the sentence of whipping should be imposed only where there is evidence of a substantial degree of actual physical violence; (2) in the cases before the Court the degree of violence employed was not such as to justify a sentence of whipping.

CRIMINAL APPEAL.

Appellants in person.

H. B. Livingstone (Crown Counsel) for the respondent.

Cur. Adv. Vult.

The judgment of the Court of Criminal Appeal was delivered by :—

Murray-Aynsley, C.J. : — These are three appeals, in the first of them the appellants were convicted of armed gang robbery, in the other two, of armed robbery. In the first case there was an appeal against conviction only. We consider that there was insufficient evidence that five persons took part in the robbery, and in consequence we are of the opinion that the conviction should have been of armed robbery only. We amend the conviction accordingly and this opens the question of sentence for consideration. It is convenient that the three cases should be considered together.

Certain general observations may be made. Every robbery, armed or otherwise, is a very serious offence and must be punished with a long term of imprisonment. In addition the law provides that sentences of whipping may be imposed. We consider, however, that such sentences should only be imposed in cases of a certain type. It is not possible to define in exact terms the dividing line between cases in which sentence of whipping should or should not be imposed. We wish, however, to give certain indications with a view to securing a measure of uniformity in the Courts of the Colony.

Every case of robbery involves violence to a certain extent. We consider that more than this degree of violence should be present before a sentence of whipping is imposed. We consider that there should be a substantial degree of actual physical violence. The word "brutality" is not exact, but it will probably help to explain what we mean. The physical violence used should involve injury which is not merely trivial or a substantial degree of pain.

In the cases before us at present, we are not of the opinion that the degree of violence employed was such as to justify a sentence of whipping. Therefore we amend the sentences in each case where whipping was imposed by omitting that part which relates to whipping. In other respects the sentences which were substantial periods of imprisonment were proper and we consider that they should stand.

ORDERS:

No. 1/53. — Leave to appeal against conviction. Conviction varied to one of armed robbery under section 397 of the Penal Code. Sentence on Lim Thiam Hen varied by omission of such part as relates to whipping. Otherwise sentences unchanged.

No. 2/53. — Sentences varied by the omission of such part as relates to whipping.

No. 4/53. — Leave to appeal against sentence. Sentence varied by omission of such part as relates to whipping.

Sentences varied.
Appeals dismissed.

P. MARIAPPAN v. NG AH BOEY.

[C. A. (Murray-Aynsley, C.J., Mathew, C.J. (F.M.) and Knight, J.) February 2, 1953]

[Singapore — Civil Suit No. 20 of 1952]

Landlord and tenant — Control of Rent Ordinance — Hypothecation of tenancy to secure loan — Whether sub-tenancy created — Mortgage of interest in premises — Control of Rent Ordinance not applicable.

The proceedings concerned a hypothecation of a tenancy held by one Abdul Rahman to secure a loan of $800 made by the appellant. The transaction took the form of a power of attorney to enable the appellant to collect rents and an agreement which purported to be a sub-demise to the appellant for 18 months. The loan was not repaid and on the expiration of the 18 months' period Abdul Rahman assigned his interest in the premises to the respondent who had no notice of the appellant's claims. The only point of substance which was argued in the Court below was as to whether a sub-tenancy was created.

Held, affirming the decision of the learned trial Judge: (1) the transaction did not amount to a sub-demise and the Control of Rent Ordinance did not apply and accordingly there was no answer to the respondent's claim; (2) it was not within the contemplation of the Control of Rent Ordinance that its protection should be given to a mere mortgagee.

CIVIL APPEAL.

N. L. Macassey for the appellant.

Claude da Silva for the respondent.

Cur. Adv. Vult.

Brown, J. [Trial Judge] : — The only point of substance in this case is whether the Agreement of 4th July, 1949, is an agency agreement or a tenancy agreement. The fact that the parties described themselves as the "tenant" and "sub-tenant" respectively has little materiality. The document must be looked at as a whole in order to determine what the parties were agreeing to.